

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

Test Today USA, LLC, )  
)  
Plaintiff, )  
)  
v. )  
)  
Phi Life Sciences, LLC, )  
)  
Defendant. )  
\_\_\_\_\_ )

**VERIFIED COMPLAINT**

2:22-cv-03072-BHH

Plaintiff complains of the defendant as follows:

1. Plaintiff Test Today USA, LLC is a Wyoming limited liability company with its primary place of business in Texas. All members of Test Today USA reside in Texas.
2. Defendant Phi Life Sciences, LLC is a South Carolina limited liability company with its primary place of business located in Charleston County, South Carolina.
3. This case asserts state law contract claims against the defendant. This court has jurisdiction over the parties named herein pursuant to 28 USC §1332. Venue is proper in this District.
4. Test Today USA (hereinafter “Test Today”) is a marketing company. During the Covid-19 pandemic, it referred patients needing testing to designated lab companies for Covid testing.
5. On or about November 12, 2021, Test Today entered into a Marketing Services Agreement with Phi Life Sciences (hereinafter “Phi Life”). A true and correct copy of the Marketing Services Agreement is attached hereto as Exhibit A and made a part and parcel hereof (hereinafter “Agreement”).
6. Phi Life promised to pay Test Today fixed compensation for its services. The Agreement provides:

In exchange for the Contractor Services to be provided by Contractor hereunder, Company agrees to pay Contractor fixed compensation equal to a monthly amount of \$800,000 (the "Service Fee"). The Parties acknowledge and agree that the Service Fee is intended to reflect fair market value for the services provided and shall not take into account the volume or value of past, present, or anticipated referrals or other business generated between the Parties. The Service Fee shall be pro-rated for any partial year or month.

On or before the fifteenth (15th) and (30th) days of every month, Company agrees to pay Contractor the Service Fee in two equal installments. Company's payment of the Service Fee shall not include any withholds, including for any taxes.

Agreement, Exhibit C, pg. 16.

7. The Agreement further provides that: "5.3 No Cause Termination. This Agreement may be terminated by either Party without cause upon sixty (60) days prior written notice to the other party."
8. Test Today provided services to Phi Life immediately upon the contract being ratified.
9. On or about March 25, 2022, Phi Life terminated the agreement without cause. Despite the termination, Test Today remained ready, willing, and able to perform the contract and did so perform through July of 2022.
10. Pursuant to the Agreement, Test Today billed Phi Life for its services each month. While Phi Life paid some of the funds due under the contract, it has failed to pay all. Although demand has been made, Phi Life has refused to make payment and has breached it.
11. There is due and owing from Phi Life the sum of \$2,946,666.66 under the contract.
12. The Agreement further provides for the payment of reasonable attorney's fees by any party violating the Agreement. Section 8.1.

### **FOR A FIRST CAUSE OF ACTION**

### **BREACH OF CONTRACT**

13. Plaintiff repeats paragraphs one through 12 above as if repeated verbatim.

14. Test Today and Phi Life entered into the Agreement attached hereto as Exhibit A.
15. The Agreement required Phi Life to pay Test Today \$800,000 per month (pro-rated) for services rendered.
16. Test Today performed under the Agreement and was ready, willing, and able to continue to preform under the Agreement when Phi Life terminated it.
17. Phi Life breached the agreement and caused test Today damages by failing to make all payment due under the Agreement.
18. There is due and owing from Phi Life the sum of \$2,946,666.66, plus attorney's fees and costs as allowed by the Agreement, in addition to other damages as allowed by law, including pre-judgment interest.
19. As a direct and proximate result of Phi Life's breach of contract, Test Today has been injured and suffered compensatory damages. Test Today is entitled to a judgment against Phi Life for the full amount of the damages suffered by it.

WHEREFORE plaintiff prays for judgment in its favor, for actual damages, pre-judgment interest, attorney's fees, court costs, and such other relief as the Court deems just, prudent, and proper.

s/ David K. Haller  
David K. Haller, Esq. (Fed. Id. 7088)  
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*Attorney for the Plaintiff*

September 12, 2022

Charleston, South Carolina

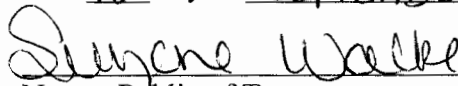
STATE OF TEXAS                                 )  
  )  
COUNTY OF DENTON                         )         **VERIFICATION**

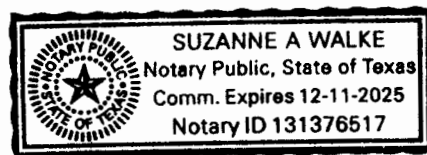
APPEARED BEFORE ME Frederick Costa, III who, being duly sworn deposes and states that he is the President and Chief Executive Officer of Test Today, USA, plaintiff herein. He has read the complaint and testifies that the allegations made therein, including the amounts due from defendant Phi Life Sciences, LLC, are true and correct to the best of his knowledge, safe for those allegations made on information and belief, and as to those allegations, he is informed and believes them to be true.

  
Frederick Costa, III

SWORN TO AND SUBSCRIBED BEFORE ME

This 12 day of September, 2022

  
Notary Public of Texas



My Commission Expires: 12-11-2025